Supreme Court, U.S.
FILED
941888 MAY 17 1995
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No. _____

In The

Supreme Court of the United States

October Term, 1994

IONA SIME, *et al.*,

Petitioners,

vs.

CITY OF ROHNERT PARK,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

PETITION FOR CERTIORARI

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58 pp

QUESTION PRESENTED

May a city government be excused from violating federal constitutional safeguards in order to implement the will of its electorate as expressed through the initiative power? Specifically, is the City of Rohnert Park excused from abrogating its contract with Petitioners in order to implement an initiative that violates the federal constitutional standard prohibiting impairment of contract?

PARTIES TO THE PROCEEDING BELOW

The Petitioners are the owners of the five mobilehome parks located in the City of Rohnert Park, California. Petitioners include Iona Sime, dba Las Casitas de Sonoma; Hillsboro Properties, Inc., and Paul Goldstone Enterprises, a Joint Venture dba Rancho Grande Mobilehome Park; Indian Springs, Limited, a California Limited Partnership, dba Rancho Verde Mobile Estates; Rancho Feliz, Ltd., a California Limited Partnership, dba Rancho Feliz Mobilehome Park and Paul S. Heath, Barbara R. Heath, John Heath and Margaret D. Heath, dba Valley Village Mobilehome Estates.

In the proceedings below, Petitioners were the plaintiffs at the trial level and the respondents on appeal. Those petitioners doing business as Valley Village Mobilehome also filed a cross-appeal concerning the amount of contract damages awarded to them.

Respondent is the City of Rohnert Park. In the proceedings below respondent, City of Rohnert Park, was the defendant, appellant and cross-respondent.

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OPINIONS BELOW

The unpublished opinion of the California Court of Appeals, First District, Division Two was filed on December 1, 1994 in Sime, et al. v. City of Rohnert Park, Case No. A057779. A copy of the opinion is attached hereto as Appendix 1 – Appendix 20.

On March 31, 1992 a Judgment and Statement of Decision was entered in the above-entitled matter in the Superior Court for the State of California, County of Sonoma. The Judgment awarded Plaintiffs, who are herein Petitioners, breach of contract damages and attorneys fees.

The portion of the Judgment and Decision at issue in this Petition is the "Partial Statement of Decision", in which the trial court sets forth its rulings and findings regarding the City's liability for breach of contract. The Partial Statement of Decision (hereinafter "PSD") is reported at pp. 33A-44A of the Clerk's Supplemental Transcript on Appeal, and a copy is attached hereto as Appendix 21 – Appendix 29.

On February 16, 1995 the Supreme Court of the State of California denied review of the unpublished opinion of the Court of Appeal, First District. A copy of this final decision denying review is attached hereto as Appendix 30.

STATEMENT OF JURISDICTION

The Supreme Court of the State of California denied review of the opinion of the Court of Appeal of the State

of California, First Appellate District, Division Two on February 16, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves Article I, Section 10 of the United States Constitution, which provides:

> No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . .

This case also involves interpretation of the duty imposed upon California municipalities to adopt initiative legislation pursuant to California Election Code, Section 4013 (now § 9217), which provides:

> If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.
>
> (Repealed by Stats. 1994, c. 920 (S. B. 1547) § 1, and reenacted as California Elections Code § 9217 (1995).)

STATEMENT OF THE CASE

Petitioners (hereafter "Park Owners") are the owners of the five mobilehome parks located in the City of Rohnert Park, California. In 1985, the City Council held lengthy committee hearings in which the tenants' appointed representatives and Park Owners participated. During the course of the hearings, a valid rent control contract was drafted with the full participation of the tenants' representatives, Park Owners, and the City Council. (CST 53-76) The contract was between the City and the Park Owners.

The contract was commonly referred to as "the Green Book". It was unanimously approved by the City Council and signed by the Mayor, under the authority delegated to the Council and Mayor as the elected officials of the people of Rohnert Park. (CST 52-52, 70) Rohnert Park's mobilehome park tenants thus obtained a 10 year contract controlling space rents under terms to which they had agreed.

In executing the Green Book, Park Owners relinquished their rights to collect uncontrolled, market rents from tenants. The Green Book stated:

> It is the purpose of this Agreement to encourage and facilitate fair and reasonable rents within mobilehome parks within the City giving due consideration to the concern of the mobilehome park homeowner to pay a rent that is fair and reasonable and to the concern of the mobilehome park owner for a fair rate of return on his property. (CST 54-55, Green Book § 1, *Purpose*)

Reviewing the program, the trial court found that the Green Book "constitutes an innovative contractual rent control system consistent with State and City mandates for affordable housing programs. See [California] Government Code § 65593 and Rohnert Park General Plan." (Appendix 23, PSD ¶1) The Green Book provided the people of Rohnert Park a public benefit – an affordable housing program for low income residents. In return, the people of Rohnert Park, through their elected officials, promised Park Owners a 10 year period of stability in which to make financial decisions and operate their businesses. This stability was secured by the City's central promise, contained in the *Purpose* statement of the Green Book, that:

> [S]o long as Parks are not in breach of this agreement no rent control or rent review ordinance affecting mobile home parks shall be considered or adopted by the City. (CST 54-55, Green Book § 1, *Purpose*)

Some two years after the execution of the Green Book, a local rent control initiative, Measure "A" was qualified by Rohnert Park's mobilehome park tenants. (CST 127-134, Measure "A") The terms of the initiative substantially altered mobilehome space rent control under the Green Book. (Appendix 25, PSD ¶20)

On December 8, 1987 a special election was held in which Measure "A" was the only ballot issue. At the time there were 36,322 registered voters in the City of Rohnert Park. Only nine percent of the eligible electorate voted and the initiative passed with 1,781 votes. (Appendix 25, PSD ¶7)

On December 17, 1987, the City Council adopted the rent control initiative by resolution. The City then *voided* the Green Book contract, and proceeded to implement the rent control initiative, Measure "A", as Ordinance No. 494 to all Park Owners. (CST 135-145)

After the City's adoption of Ordinance #494, Park Owners sought exemption from its application. Section 3-G of the Ordinance provides:

> The board shall hold at least one public hearing to consider the views of interested parties prior to any decision *decontrolling* or reimposing rent stabilizations *on any category or classification of rental units.* [Emphasis added.]

The Park Owners reasoned that the existence of a valid 10 year rent control contract to which they were party provided good reason for decontrolling the parks. However, both the Rent Control Board and the City Council refused to apply Section 3-G to exempt Park Owners from the Ordinance's application.

The Park Owners sued the City for breach of contract. In bringing the suit, Park Owners did not dispute the *facial* constitutionality of Ordinance #494. The constitutionality of rent control ordinances, including those drafted by initiative, has generally been established. See *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129, 165 (1976) [Rent control is a proper exercise of local government's police power if it is "reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property."] Moreover, Ordinance #494, on its face, provided the City a means of honoring the Green Book contract. Section 3-G

allowed the City to decontrol *"any category or classification of rental units."*

In bringing the suit, Park Owners asserted that Ordinance #494 *in its application to them,* constituted an unexcused breach of contract in violation of the Contract Clause of the United States Constitution. Park Owners thus sought damages for an unexcused breach of contracts.

The Rulings Below:

Trial Court: The trial court awarded Park Owners contract damages and attorney fees. The trial court held that the City had indeed breached the Green Book in *adopting* Ordinance #494 and *implementing* it to Park Owners. The trial court further found that the breach was not excused. It was not excused under the Green Book's Section 14, which allowed the contract to be "automatically amended to include any change in law affecting its provisions or rent controls." (CST 68, Green Book § 14) The trial court explained:

> Measure A which vitiates the Green Book is not the type of amendment either party contemplated in Section 14 which must bow to the specific prohibitions stated in the purpose of the agreements. (See paragraph 4 above) *The common sense interpretation of Section 14 is that the agreement will be subject to any change in law beyond the control of the con[]tr[a]cting parties.* (Appendix 28-29, PSD ¶11) [Emphasis added.]

Nor was the breach excused as a lawful impairment of contract made necessary in the reasonable exercise of the City's police powers. (Appendix 22, PSD, p. 2, Ruling)

The trial court found no evidence "justify[ing] the impairment of the very deal [Rohnert Park had] entered into just three years earlier." "The evidence produced did not establish that the rental shortage in 1988 was any more severe than the shortage that existed in 1985" when the Green Book was executed. (Appendix 27, PSD ¶9) Thus the trial court found that the City of Rohnert Park had unlawfully breached its contract, by abrogating the Green Book in favor of conflicting legislation, in violation of the Contract Clause of the United States Constitution.

Court of Appeal: On December 1, 1995 the California Court of Appeal, First Appellate District reversed the trial court's decision. In apparent sympathy for the City, the State Court of Appeal interpreted the situation in which the City found itself as an impossibility, the City floundering between Scylla and Charybdis:

> The contention that adoption of the ordinance breached the agreement is untenable, in short, because it places the City between the Scylla of breaching the contract and the Charybdis of frustrating an exercise of voter rights under the [California] Constitution. There was not an actionable breach because passage of Measure A rendered it impossible for the City to comply with its contractual duties under the Green Book. (Appendix 11, Slip Op., p. 11)

The Court of Appeal explained, "Elections Code section 4013 . . . divests the City of any discretion to refuse to implement or enforce a valid initiative measure." (Appendix 9-10, Slip Op. pp. 9-10) Thus, the Court opined that the electorate's approval of the initiative *was* a "change of law beyond control of the parties" such that

Section 14 of the Green Book permitted its automatic abrogation. (Appendix 15, Slip. Op. p. 15) The Court of Appeal thus erred.

The State Court of Appeal did not reverse the trial court's finding that the breach of the Green Book constituted an unlawful impairment of contract. The Court stated:

> Although the parties devote much of their attention to whether Ordinance 494 constitutes an impermissible impairment of contract, we shall focus our discussion upon what we perceive to be the crucial questions: Whether by adopting Ordinance 494, the City committed a breach of the Green Book agreement. We do not reach the issue of impairment. . . . (Appendix 9, Slip Op. p. 9, fn. 6)

Side-stepping, rather than reversing, the trial court's findings concerning impairment of contract, the Court of Appeal excused the City's breach of contract under the doctrine of impossibility; the Court opined that the City had no choice but to abrogate the Green Book to implement Ordinance #494. "There was not an actionable breach because passage of Measure A rendered it impossible for the City to comply with its contractual duties under the Green Book." (Appendix 11, Slip Op., p. 11) The State Court of Appeal thus erroneously interpreted the electorate's reserved power of the initiative, set forth in the California Constitution and implemented through the California Elections Code, as a mandate that the will, or whim, of the political majority, once expressed through an initiative election, must as a necessity be upheld, even though it breaches the U.S. Constitution.

In doing so, the State Court of Appeal ignored the fact that an initiative ordinance, like any other local or state law, must conform to federal constitutional standards before it may be enforced against persons who are entitled to protection under the federal Constitution. *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-37, 845 S.Ct. 1459, 12 L.Ed.2d 632 (1964); *Delaney v. Superior Court*, 50 Cal.3d 785, 806 (1990); *Mulkey v. Retiman*, 64 Cal.2d 529, 533 (1966). The State Court of Appeal further ignored the fact that the City had both the ability and the duty to enforce Ordinance #494 in a constitutional manner, so that it would not unlawfully impair the contract rights of Park Owners.

REASONS FOR GRANTING REVIEW

A. Initiative Legislation, Like All Other Legislation, Must Meet The Constitutional Standard Required To Impair An Existing Contract.

Under the California Constitution, in addition to the legislative power vested in the Legislature, the people of the State have reserved to themselves the legislative powers of initiative and referendum. Cal. Const. Art. IV, § 1. "The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." Cal. Const. Art. II, § 8(a). At local levels, it is the analogous power of county, city, or district voters to adopt ordinances and of the city voters to adopt, revise, amend, or repeal a city charter. Cal. Const. Art. II, § 11. Rohnert Park's rent control Ordinance #494 was

enacted by Rohnert Park's electorate through this reserved legislative power of the initiative.

As the initiative has been reserved to the people by the California Constitution, it is recognized by the State judiciary as one of the most precious rights of the State democratic process. *Kennedy Wholesale, Inc. v. State Board of Equalization*, 53 Cal.3d 245, 250 (1991); *Raven v. Deukmejian*, 52 Cal.3d 336, 341 (1990). Therefore the State judiciary has adopted a policy requiring the initiative power, as well as a statute or ordinance enacted by initiative, to be liberally construed to promote the democratic process. *Id.* at 250; *Arvin Union School Dist. v. Ross*, 176 Cal.App.3d 189, 198 (1985).

The policy upholding the initiative power is also reflected in the California Elections Code. Section 4013 (readopted in 1995 as § 9217) provides:

> If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people unless provision is otherwise made in the original ordinance.

In its desire to preserve the initiative power, the California Court of Appeal interpreted the initiative provisions of the California Constitution, and California

Elections Code § 4013 (now § 9217), as a mandate that a City Council adopt and implement an initiative, once it has been approved by 51% or more of the voting electorate. The Court of Appeal thus excused the City of Rohnert Park from the breach of the Green Book contract, reasoning that it was not possible for the City to "frustrat[e] an exercise of voter rights under the [California] Constitution." "There was not an actionable breach because passage of Measure A rendered it impossible for the City to comply with its contractual duties under the Green Book." (Appendix 11, Slip Op., p. 11)

It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to, federal law." *Hillsborough County v. Automated Med. Labs, Inc.*, 471 U.S. 707, 712, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985), quoting *Gibbons v. Ogdon*, 9 Wheat. 1, 211, 6 L.Ed 23 (1824); *In re Baker & Drake, Inc. v. Public Service Comm'n*, 35 F.3d 1348, 1352 (9th Cir. 1994). The United States Constitution is "the supreme law of the land . . . anything in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. Art. VI, cl. 2. While the California State law which provides for the people's power of initiative does not, in itself, conflict with federal law, the State Court of Appeal's interpretation of the law does.

Despite the fact that the initiative is a power reserved to the people by the California Constitution, statutes and ordinances adopted by initiative are subject to constitutional limitations, including those of the United States Constitution. U.S. Const., Art. VI, cl. 2; also *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 521, 540 (1990); *Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805,

814-15 (1989); *Evangelatos v. Superior Court*, 44 Cal.3d 1188, 1202 (1988); *Marblehead v. City of San Clemente*, 226 Cal.App.3d 1504, 1508 (1991); *Garat v. City of Riverside*, 2 Cal.App.4th 259, 288, n.21 (1991). A local government, like a State judiciary, has a duty to uphold the protections afforded individuals under the U.S. Constitution. *Preferred Communications, Inc. v. City of Los Angeles*, 13 F.2d 1327, 1333 (9th Cir. 1994) ["All government officials have a duty to uphold the United States Constitution . . . "]

A specific constitutional limitation on the legislative power, whether vested in a state legislature or in its people, is set forth in the Contract Clause of the United States Constitution. Article I, Section 10 of the United States Constitution, provides: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts, . . . " The language of the Contract Clause is facially absolute. However, "its prohibition is accommodated to the inherent police power of the state to safeguard the vital interests of its people." *Energy Reserves v. Kansas Power & Light Co.*, 459 U.S. 400, 410, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983); *Home Bld. & Loan Assn. v. Blaisdell*, 290 U.S. 398, 434 (1934); *Interstate Marina Development Co. v. County of Los Angeles*, 155 Cal.App.3d 435, 445 (1984). Thus the Contract Clause has been interpreted by the United States Supreme Court as requiring that "[l]aws altering the rights and obligations of contracting parties must be reasonable and necessary for the public purpose for which they were enacted." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 198 S.Ct. 2716, 57 L.Ed.2d 727 (1978); also *Interstate Marina Development Co. v. County of Los Angeles, supra*, 155 Cal.App.3d at 445.

In this instance, the trial court found that initiative Ordinance #494 did not meet the standard required by the Contract Clause for a lawful impairment of contract. (Appendix 22, PSD, p. 2, Ruling) The trial court found no evidence "justify[ing] the impairment of the very deal [Rohnert Park had] entered into just three years earlier." (Appendix 27, PSD ¶9) The Court of Appeal did not overturn the trial court's finding that the initiative Ordinance did not meet the standard for impairment required by the Contract Clause. Instead, the Court of Appeal simply excused the impairment of the Green Book, on the grounds that the legislation was the electorate's and not the City Council's.

The Court ignored the federal constitutional limitations on initiative legislation. It allowed the City of Rohnert Park to abrogate its contract in favor of conflicting initiative rent control without concern for the fact that the constitutional standard for lawful impairment of the contract had not been met. In its zeal to uphold the California Constitution, the Court of Appeal so liberally interpreted the initiative power under the State Constitution as to increase the electorate's legislative power of initiative to the detriment of the rights of the individual Park Owners under the federal Constitution.

B. The City's Implementation of Ordinance #494 To Park Owners Unconstitutionally Impaired The Green Book Contract.

A city government has a duty not only to uphold the federal law, but to uphold its own contracts so they do not become a dead letter. Thus, "the government cannot

reserve to itself an unlimited right to escape its contractual obligations "without rendering its promises illusory and the contract void." *Madera Irrigation Dist. v. Chowcilla Water Dist.*, 985 F.2d 1397, 1405 (9th Cir. 1993). Explaining this rule, the court in the *Madera Irrigation* case stated, "[T]oo liberal an interpretation of the residual sovereign power of the government to override its contractual commitments would eviscerate the government's power to bind itself to contracts. In addition to the moral offensiveness of allowing the government to break its promises, too liberal a construction would have the paradoxical consequence of weakening the sovereign power to implement policy." *Madera Irrigation Dist. v. Chowcilla Water Dist., supra,* 985 F.2d at 1401; citing *Perry v. United States* 294 U.S. 330, 351-354, 55 S.Ct. 432, 435-436, 79 L.Ed. 912 (1935).

In executing the Green Book, the City of Rohnert Park contracted not to adopt or implement a rent control ordinance. (CST 54-55, Green Book § 1, *Purpose*) Like many contracts, the Green Book contained an escape clause. Section 14 allowed the contract to be "automatically amended to include any change in law affecting its provisions or rent controls." (CST 68, Green Book § 14)

Consistent with the rule that "the government cannot reserve to itself an unlimited right to escape its contractual obligations "without rendering its promises illusory and the contract void," the trial court interpreted Section 14:

> *The common sense interpretation of Section 14 is that the agreement will be subject to any change in law beyond the control of the con[]tr[a]cting parties.* (Appendix 28-29, PSD ¶11) [Emphasis added.]

The State Court of Appeal did not dispute or reverse the trial court's interpretation of Section 14. Rather the Court of Appeal opined that the initiative, since it was enacted by the electorate, *was* a "change of law beyond control of the parties" such that Section 14 of the Green Book permitted its automatic abrogation. (Appendix 2, Slip Op., ¶2; Appendix 9-10, Slip Op. ¶3-1) In so holding, the Court of Appeal relieved the City of Rohnert Park of its duty to uphold the federal Constitution and failed to examine the control the City actually had over the initiative Ordinance.

C. The City Had The Power To Honor The Green Book Contract.

The City of Rohnert Park had the power to adopt the initiative, or, to challenge its validity in a declaratory relief action.[1] Once the initiative was adopted, the City had the power to implement the initiative. In doing so, the City also had the power to implement the initiative in a constitutional manner.

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[1] A facial challenge to a legislative act is the most difficult to mount. The challenger must establish that no set of circumstances exists under which the legislation is constitutionally valid. *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987). The Park Owners did not challenge the facial constitutionality of Ordinance #494 under the Contract Clause of the United States Constitution because the Ordinance's terms provided the City a means of honoring the Green Book contract.

Section 3-G of Ordinance #494 allows the City to decontrol "any category or classification of units." Section 3-G states: "The board shall hold at least one public hearing to consider the views of interested parties prior to any decision *decontrolling* or reimposing rent stabilizations on *any category or classification of rental units.*" [Emphasis added.] (CST 137) The Ordinance thus, by its terms, empowered the City to exempt Park Owners' spaces from the implementation of the rent control Ordinance through the life of the Green Book.

Under this Section 3-G, the City had the power to uphold its contractual obligations. Park Owners twice pointed Section 3-G out to the City and sought exemption under its provisions. In both instances, the City refused to apply Section 3-G of the Ordinance to decontrol Park Owners' spaces. The Park Owners were left with no choice but to sue the City for breach of contract.

The trial court found the City had unconstitutionally impaired its contract obligations in implementing Ordinance #494 to Park Owners. The Court of Appeal, however, "reject[s] Park Owners' [and the trial court's] interpretation of [Section 3-G] of the Ordinance as unreasonable because it would have the effect of undermining the voter initiative."[2] (Appendix 13, Slip Op., ¶1)

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[2] Before rejecting Park Owners' interpretation of Section 3-G, the Court of Appeal states that the issue of decontrol under Section 3-G was not raised at trial. The Court of Appeal is in error. The possibility of decontrolling Park Owners' spaces for the term of the Green Book under Section 3-G was expressly raised in Park Owners' trial brief, during opening argument (RT 17-18), during trial testimony (RT 101-107) and was discussed

The Court of Appeal's decision again places cart before horse, safeguarding the voter initiative over federal constitutional protections and limitations. It is a long standing maxim that "as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." *N.L.R.B. v. Jones & Laughlin, Steel Corp.* 301 U.S. 1, 30, 81 L.Ed. 893 (1937); quoted in *Robertson v. Seattle Audobon Soc.*, 503 U.S. 429, 441, 112 S.Ct. 1407, 118 L.Ed.2d 73 (1992); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Build & Const. Trades Council*, 485 U.S. 568, 575, 108 S.Ct. 1392, 1397, 99 L.Ed.2d 645 (1988) [When an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems]; *Communications Workers of Am. v. Beck*, 487 U.S. 735, 762, 108 S.Ct. 2641, 2657, 101 L.Ed.2d 634 (1988) [same]; *Apache Survival Coalition v. United States*, 21 F.3d 895 (9th Cir., 1993).

The Court of Appeals explains its rejection of Park Owners' interpretation of Section 3-G of the Ordinance, stating:

> [T]he first sentence of Section 3-G requires the "rent appeals board . . . [to] issue and follow such rules and regulations, including those

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between petitioners' counsel and the court during closing argument (RT 256-258). Indeed the trial court's decision expressly reflects its consideration of the decontrol argument. The court found the Green Book was breached in adopting and implementing Ordinance #494 to the Park Owners and the court emphasized that the Ordinance was a change of law within the City's control. (Appendix 22, PSD, Ruling, Appendix 25, ¶8 and Appendix 28, ¶11)

> which are contained in this chapter, *as will further the purposes of this chapter*. As stated in section 1 of Measure A and the ordinance, the purpose of the measure was to alleviate the hardship caused by the serious shortage of mobilehome spaces in the City and the rapidly rising rents for such spaces by preventing unreasonable rent increases while assuring owners' right to a fair return. (Measure A, § 1; Ord. No. 494, § 1.)" (Appendix 13, Slip Op. ¶1) [Court's emphasis included.]

In its concern for the voter initiative, the Court of Appeal ignores the fact, as was noted by the trial court, that the Ordinance would remain in place to control new mobilehome parks as well as those of Park Owners at the expiration of the Green Book. (RT 256-258) The Court of Appeals also ignores the equivalent purpose of the Green Book, already in place at the adoption of the Ordinance.

> It is the purpose of this Agreement to encourage and facilitate fair and reasonable rents within mobilehome parks within the City giving due consideration to the concern of the mobilehome park homeowner to pay a rent that is fair and reasonable and to the concern of the mobilehome park owner for a fair rate of return on his property. (CST 54-55, Green Book § 1, *Purpose*)

Reviewing the equivalent purposes of the Green Book and Ordinance #494, the trial court found that the constitutional standard for impairment of contract had not been met. "The evidence produced did not establish that the rental shortage in 1987 was any more severe than the shortage that existed in 1985 when the Green Book was executed." (Appendix 27, PSD ¶9)

The Court of Appeal, on the other hand, determined that performance of the contract was made impossible, because the City was caught between the Scylla of breaching the contract and the Charybdis of frustrating an exercise of voter rights under the [California] Constitution. While the City might have been caught between Scylla and Charybdis in terms of pleasing its voting constituency, it was not caught between these mythical creatures in terms of upholding the power of the initiative while implementing Ordinance #494 in a constitutional manner. The City had the power to apply Section 3-G of the Ordinance to decontrol Park Owners' spaces so that the Ordinance would not unconstitutionally impair the contract rights of Park Owners.

D. Certiorari Should Be Granted To Ensure the Supremacy and Integrity of the Federal Constitution.

The mobilehome park tenants and the City of Rohnert Park participated in drafting and concluding the Green Book rent control contract for the benefit of tenants. Two years later, a conflicting rent control ordinance was enacted through the power of the local initiative. The City in its desire to bend to political winds, abrogated the Green Book Contract to implement the initiative Ordinance to Park Owners. In doing so, the City Council failed to examine whether impairment of the Green Book was required by the legislation or permissible under the Contract Clause of the United States Constitution.

The Court of Appeal in its fervor to uphold the initiative process (and desire not to hold a city liable for

the sticky situation in which it was caught), held that once an initiative was approved by 51 percent or more of the electorate, a city had no choice but to breach the contract due to the mandate of California Elections Code Section 4013. Thus the Court of Appeal's decision grants the City government the power to enforce the will of a majority of its constituency over, and in spite of, the United States Constitution.

> " 'Constitutional principles,' wrote Chief Justice Warren, 'are the rules of government.' *Trop v. Dulles*, 356 U.S. 86, 103, 78 S.Ct. 590, 2 L.Ed. 630 (1957). And added Justice Jackson, 'the great purposes of the Constitution do not depend on the approval or convenience of those they restrain.' *Everson v. Board of Education*, 330 U.S. 1, 28, 67 S.Ct. 504, 91 L.Ed. 711 (1947). Chief Justice Wright also said it well: 'A democratic government must do more than serve the immediate needs of a majority of its constituency – it must respect the 'enduring general values' of the society. Somehow, a democracy must tenaciously cling to its long-term concepts of justice regardless of the vacillating feelings experienced by a majority of the electorate.' Wright, The Role of the Judiciary (1972) 60 Cal. L. Rev. 1262, 1267;" Quoted from *Brosnahan v. Brown*, 32 Cal.3d 236, 299, J. Mosk (dissenting opinion) (1982).

In California, as well as many other states, the initiative power is employed increasingly by the people to legislate concerning many areas of state and local government. It is a natural tendency of government officials and judiciary alike to desire to uphold the will of the electorate. The California Court of Appeal's interpretation of

Elections Code § 4013 confuses preservation of the initiative power with preservation of the will (or whim) of the majority. To allow political self-preservation over constitutional limitations threatens the very existence of the federal Constitution. A writ of certiorari should be granted to ensure the supremacy and integrity of the United States Constitution.

CONCLUSION

Wherefore, Petitioners respectfully request that their petition for a writ of certiorari be granted.

Dated: May 16, 1995

Respectfully submitted,

LAW FIRM OF
SPANGENBERG & ASSOCIATES

By: DAVID SPANGENBERG,

Attorneys for Petitioners
Iona Sime, et al.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

IONA SIME et al.,

Plaintiff and Respondents,

vs.

CITY OF ROHNERT PARK,

Defendant and Appellant.

_____/

A057779

Sonoma County
Superior Court
No. 166309

Introduction

(Filed Dec. 1, 1994)

The City of Rohnert Park (City) appeals from a judgment of the Sonoma County Superior Court awarding plaintiff-respondents, owners of five mobilehome parks within the City limits (Park Owners), approximately $1,202,000 in damages for breach of contract and attorneys' fees. The judgment reserves jurisdiction to award additional damages for breach of contract and attorneys' fees under Civil Code section 1717 for the period July 1, 1991 to April 15, 1995, the termination date of the agreement.

Certain plaintiffs doing business as Valley Village Mobilehome Estates (Valley Village) cross appeal from that part of the judgment providing that Valley Village is not entitled to the contractual provisions of the "Four-Year Agreement" in the calculation of contract damages.

We shall reverse as we conclude the City's adoption of an ordinance implementing a rent control initiative passed by the voters did not constitute a breach of contract.[1]

Assuming, without deciding, that the City could lawfully bind itself not to exercise its police power to adopt a rent control ordinance in the future, passage of the voter initiative made performance of the agreement impossible as the City was compelled by statute to enforce the inconsistent and superseding initiative. Moreover, by its own terms, the agreement contemplated amendment to conform to changes in law beyond control of the parties.

Statement of Facts/Statement of the Case

In April 1985, following hearings in which the City Council, tenant representatives and Park Owners participated, the City and the Park Owners executed a ten-year agreement regarding rents in the five mobilehome Parks. Commonly referred to as "The Green Book," the agreement was signed by the Park Owners and approved by a unanimous vote of the City Council.

Described by the trial court as "an innovative contractual rent control system", the Green Book "Provided the tenants with limitation on rental increases, limits on vacant lots, some modest guarantees of capital improvements, and a method of resolving disputes through arbitration and mediation. In return for giving up free market

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[1] This determination and our reversal of the award of damages against City renders moot Valley Village's cross appeal.

rents for ten years the Park [O]wners received the guarantee of stable rental income and a fair return on investment for the same period. The City . . . secured a component of affordable housing in keeping with its General Plan."

A central provision of the Green Book stated: "So long as Parks are not in breach of this Agreement, no rent control or rent review ordinance affecting mobilehome Parks shall be considered or adopted by the City."

Section 14 of the Green Book provided in relevant part: "This Agreement shall be automatically amended to include any change in law affecting its provisions or rent controls".

In 1987, voters circulated a rent control initiative, known as Measure A, that obtained the requisite number of signatures and qualified for the ballot. On December 8, 1987, the voters passed Measure A. It is undisputed that in doing so the voters were exercising rights provided under section 11 of Article II of the California Constitution. (See also sections 4000 through 4021 of the Elections Code.) The measure established rent controls for mobilehome park spaces within the City and is fundamentally irreconcilable with the rent control scheme prescribed by the Green Book. City officials did not solicit or initiate Measure A or campaign for it in any way. Nor is there evidence any City money or support was expended in favor of the initiative. However, after it was adopted by the voters the City Council enacted an ordinance implementing the initiative (Ordinance 494). The trial court found the City did not financially benefit as a result of the initiative or the implementing ordinance.

Park Owners sought exemption from the ordinance until expiration of the ten year term of the Green Book. When the City refused, the Park Owners commenced the instant action for declaratory relief and breach of contract. Trial of liability and damages was bifurcated.

Following submission of the evidence, the trial court[2] ruled that the Green Book was a valid and binding contract between the City and Park Owners with tenants as third party beneficiaries; that the City's promise not to adopt a rent review ordinance during the term of the Green Book did not constitute an illegal divestment of the City's police powers; and that Measure A was accomplished according to lawful initiative process. Although recognizing that the "City acted as a peacemaker in 1985 when it helped broker the Green Book in an effort to bring stability to the tenant-owner factions in the five mobile [home parks]," and commending the City for its "innovative and conciliatory role in creating the Green Book," the trial court nevertheless found that adoption of Ordinance 494 and its application to the five Park Owners constituted a breach of the Green Book agreement and that the breach "caused a substantial impairment and significant financial losses to the Park owners." The court further found that section 14 of the Green Book did not excuse the City from its breach, as Measure A was not the type of amendment contemplated by the parties and as the "commonsense interpretation of Section 14 is that the agreement will be subject to any changes in law beyond control of the constructing [sic] parties."

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[2] Retired judge Daniel Weinstein heard the case pursuant to Code of Civil Procedure section 638.

The damages phase of the trial resulted in a judgment in favor of the five mobilehome park owners for a total of approximately $887,159. The court also awarded reasonable attorneys' fees under section 12 of the Green Book in the sum of $308,651, plus costs of $5,882.80.

Finally, the court retained jurisdiction to award further damages for breach of contract and attorneys' fees under Civil Code section 1717 for the period of July 1, 1991 to April 15, 1995, the termination date of the Green Book agreement.

This timely appeal followed.

I.

Preliminarily, we must decide whether it is necessary to assess the facial validity of the Green Book; that is, whether by entering into that agreement the City abdicated its authority to exercise its police powers during the 10 year contractual period.

"Without question, 'the government may not contract away its right to exercise the police power in the future' and an agreement attempting to do so is 'invalid and unenforceable as contrary to public Policy.' (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800. . . .)" (*Professional Engineers v. Department of Transportation* (1993) 13 Cal.App.4th 585, 591; accord *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 23, fn. 20; *Interstate Marina Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435, 448.) Rent control is acknowledged to be an exercise of that police power.

(*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129; *Interstate Marina Development Co. v. County of Los Angeles, supra,* 155 Cal.App.3d at p. 448.)[3]

The trial court found that the provision in the Green Book not to adopt a rent review ordinance during the term of that agreement did not constitute an illegal divestment of the City's police powers in derogation of the foregoing principles. According to the trial court, "[t]he City was not refusing to ever impose rent control. Rather the City was trading an uncertain future rent control ordinance for the certainty of a 10 year contractual rent control scheme. The Green Book in effect simply guarantees that during the 10 year contractual period the City would not impose a different rent control scheme than is contained in the Green Book."

The parties accept this view. In its opening brief the City states that it "fully accepts the concept that the City of Rohnert Park contracted not to consider or adopt rent control or rent review by ordinance affecting mobilehome

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[3] "A state is without power to enter into binding contracts not to exercise its police power in the future. *United States Trust Co. v. New Jersey* [1977] 431 U.S. [1] at p. 23, fn. 20. . . .) Rent control is an exercise of that power. 'The States must possess broad power-to-adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from state regulation by making private contractual arrangements. This principle is summarized in Justice Holmes' well-known dictim: "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." [Citation.]' (*United States Trust Co. v. New Jersey, supra,* 431 U.S. at p. 22. . . .)" (*Interstate Marina Development Co. v. County of Los Angeles, supra,* 155 Cal.App.3d at p. 448.)

parks so long as the Green Book agreement was in effect." Defending the Green Book as "a valid and enforceable means of implementing [its police] power consistent with the City's duty to preserve affordable housing," p. 4) the City argues that its facial validity is now entirely academic and need not be assessed because passage of the initiative automatically amended the agreement so as to vitiate the City's contractual duty to refrain from enacting a competing rent control ordinance.

Amici, 64 cities located throughout California, urge us to declare that the Green Book was invalid *ab initio.* Their concern is that portions of the trial court opinion that erroneously apply the contract clause and doctrine of estoppel to constrain future exercise of the City's police power and impose damages for the implementation of a voter initiative "will seriously impair the ability of all cities to adopt legislation to protect the public health and welfare and have a chilling effect on the initiative process."

We decline to address the issue. As will appear, we agree with the City that the question is in this case entirely academic.[4]

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[4] In support of the validity of the Green Book, Park Owners request us to take judicial notice of 15 documents asserted to be agreements between other jurisdictions in the state and mobilehome park owners to control space rents. As we find it unnecessary to determine that issue, we deny the request for judicial notice.

II.

In general, municipal contracts are measured by the same tests and subject to the same principles of interpretation as other contracts. Cities may be sued for breach of valid contracts and may be held liable for damages the same as if the contracts were made between private parties. (*Carruth v. City of Madera* (1965) 233 Cal.App.2d 688, 700; 10 McQuillin, Municipal Corporations (3d ed.) § 29.124, p. 164.)

Respondent Park Owners do not here claim Measure A is an unconstitutional or otherwise unlawful impairment of their contract rights.[5] They contend instead that by implementing the initiative the City breached the Green Book, as the substitution of Ordinance 494 for the

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[5] During the pendency of this appeal, the federal district court granted summary judgment in favor of plaintiff Hillsboro Properties (owner of Rancho Grande Mobile Home Park, one of the respondent Park Owners in this action) against the City ruling that the ordinance passed by the voters (Ordinance 494) "violates substantive due process on its face" as it "fails to provide a mechanism which necessarily affords landlords the opportunity to receive a profit on their capital improvement investments." (Order Granting Plaintiff's Motion for Summary Judgment [No. C-93-1723-FMS], filed May 2, 1994.)

Upon our request for further briefing as to the effect, if any, of this order upon this appeal, both parties agree that it has no effect upon the issue of breach of contract, but may effect the amount of damages owed to Park Owners depending upon whether the ordinance was invalidated from the date of its enactment or prospectively. Park Owners have requested we stay decision on this appeal until the federal district court clarifies this issue.

Our conclusion makes it unnecessary to delay our decision.

rent control scheme prescribed in the Green Book constituted an illegal impairment of contract. Respondents' ostensible indifference to the validity of Measure A dodges a central question.

If Measure A unconstitutionally impaired the Green Book agreement or is otherwise invalid, the implementing ordinance would prove unenforceable and could not expose the City to liability for breach of contract. Conversely, if the initiative itself does not illegally impair the Green Book, it is difficult to see how the City's implementation of a valid initiative measure could constitute such impairment.[6]

A.

Elections Code section 4013, set forth in the margin below,[7] divests the City of any discretion to refuse to

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[6] In any event, the validity of Measure A, and the issue of whether that initiative was an unconstitutional impairment of the Green Book, is not before us. Although the parties devote much of their attention to whether Ordinance 494 constitutes an impermissible impairment of contract, we shall focus our discussion upon what we perceive to be the crucial questions: Whether by adopting ordinance 494, the City committed a breach of the Green Book agreement. We do not reach the issue of impairment and so need not address the impairment cases relied upon by Park Owners, e.g., *U.S. Trust v. New Jersey* (1977) 431 U.S. 1, *Allied Structural Steel Co. v. Spannaus* (1977) 438 U.S. 234 and *Interstate Marina Development Co. v. County of Los Angeles, supra,* 155 Cal.App.3d 435.

[7] Elections Code section 4013 provides: "If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. The ordinance shall be considered as adopted upon the

implement or enforce a valid initiative measure. (See *Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 822.) As enforcement of such an ordinance is a ministerial act, it cannot provide the basis for finding the City in breach of contract.

Since there is no liability for breach of a contract whose performance is made impossible by operation of law, the City's inability to perform the contract was excused. (Civ. Code, § 1511, subd. 1.[8]) It is settled that "[w]here, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption by which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary." (Rest.2d, Contracts, § 261, p. 313.) "[Under California law a] party is not required to violate the law to avoid liability for breach of contract." (*Bright v. Bechtel* (9th Cir. 1986) 780 F.2d 766, 772.)

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date that the vote is declared by the legislative body, and shall go into effect 10 days after that date. No ordinance proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."

[8] Section 1511, subdivision 1, provides in pertinent part: "The want of performance of an obligation, . . . in whole or in part, . . . is excused by the following causes, to the extent to which they operate: 1. When such performance . . . is prevented or delayed by . . . the operation of law. . . . "

Morrison Home Corp. v. City of Pleasanton (1976) 58 Cal.App.3d 724, provides an instructive contrast to this case. There, the city had agreed to provide adequate sewer connections for homes to be built by the developer. The lands were developed as agreed and sewer connections were provided until interrupted by orders of the Regional Water Quality Control Board relating to violations of its waste discharge standards. The board prohibited additional sewage connections except upon conditions requiring compliance with specified waste discharge standards. After the developer sued, the trial court ruled in its favor, requiring the city to perform its contractual obligations and awarding damages for the breach thereof. The Court of Appeal affirmed, holding the city had not contracted away its police powers by entering into a development agreement specifically authorized by statute. Terming "unfounded" the city's assumption that the agreement was in conflict with the board order, *the appellate court concurred with the trial court's findings that the city could perform its agreements without violating the administrative order.* (*Id.*, at pp. 736-737, and fn. 10.)

Unlike the situation in *Morrison Homes*, the City here could not comply with both the validly adopted initiative measure and the Green Book, which present conflicting rent regulations. The contention that adoption of the ordinance breached the agreement is untenable, in short, because it places the City between the Scylla of breaching the contract and the Charybdis of frustrating an exercise of voter rights under the Constitution. There was no actionable breach because passage of Measure A rendered it impossible for the City to comply with its contractual duties under the Green Book.

B.

Park Owners contend on this appeal for the first time that performance of the agreement was not impossible as the City had the power to exempt them from operation of Measure A by decontrolling their mobilehome parks until expiration of the 10-year term of the Green Book. They argue that failure to do so constituted a breach of the agreement not to impose rent control.

This argument rests on section 3G of the Ordinance (identical to section 3G of Measure A) which provides: "The [rent appeals board established by the ordinance] shall hold at least one public hearing to consider the views of interested parties prior to adoption of general rent levels or maximum rent ceilings, or any decision decontrolling or reimposing rent stabilizations on any category or classification of rental units."

Although the Park Owners sought the exemption allowed under section 3G, the Rent Appeals Board refused to grant it and the City Council affirmed that decision. On this basis, the Park Owners claim the city "chose" to void the agreement.

The Park Owners never raised this argument below and the trial court never addressed it. "As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried." (Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals & Writs (1993) ¶ 8.229, p. 8-78, citing among others, *Ernst v. Searle* (1933) 218 Cal. 233, 240-241, and *Association for Protection of Environmental Values in Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720, 737.)

In any event, we reject the Park Owners' interpretation of the ordinance as unreasonable because it would have the effect of undermining the voter initiative. The Park Owners take the sentence on which they rely entirely out of context. The first sentence of section 3G requires that the "rent appeals board shall issue and follow such rules and regulations, including those which are contained in this chapter, *as will further the purposes of this chapter.*" As stated in section 1 of Measure A and the ordinance, the purpose of the measure was to alleviate the hardship caused by the serious shortage of mobilehome spaces in the City and the rapidly rising rents for such spaces by preventing unreasonable rent increases while assuring owners' right to a fair return. (Measure A, § 1; Ord. no. 494 § 1.) The Park Owners acknowledge that they own *all* the mobilehome parks in the City. It is inconceivable that the power to decontrol rents on a "category" or "classification" of rental units was meant to allow effective nullification of the entire initiative by exempting from its impact *all* the mobilehome parks in the City until expiration of the Green Book on April 15, 1995, nearly 8 years after passage of the initiative. Adoption of the Park Owners' interpretation would contravene the often expressed policy favoring exercise of the initiative power. " ' "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this power, courts will preserve it." [Citations.]' [Citations.]" (*Fair Political Practices Committee v. Superior Court* (1979) 25 Cal.3d 33,

41; see, e.g. *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241.)

Certainly, a more reasonable reading of section 3G is that the board may decontrol a "category or classification" of rental unit such as managers' units or units requiring extensive remodeling.

The Park Owners' construction of this provision of the Green Book is not only unreasonable, but also cannot be squared with the City's ministerial duty to enforce a facially valid initiative endorsed at election by a majority of the voters. Accordingly, we reject the Park Owners' attempt to read into the Green Book a provision which does not exist, effectively exempting all existing mobilehome parks from the reach of Measure A.

C.

Similarly, we refuse to construe the Green Book so as to read out section 14, a provision which furnishes an independent basis for our determination that the City did not breach that agreement. Section 14 states that the Green Book "shall be automatically amended to include any change in law affecting its provisions or rent controls." We conclude section 14 contemplated the possibility that the City's ability to comply with the Green Book might be compromised by a subsequent superseding legal development, such as adoption by the voters of a rent control initiative like Measure A. Consequently, the agreement is not breached by enactment of the implementing ordinance.

The language of section 14 is on its face unambiguous: "This Agreement shall be automatically amended to include *any change in law* affecting its provisions or rent controls." (Emphasis added.) California cases have traditionally interpreted the term "law" to include local ordinances. (*In re Johnson* (1920) 47 Cal.App. 465, 467; *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 486; *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 93.)

Local initiative power can provide the basis for valid rent control on the local level. (*Birkenfield v. City of Berkeley, supra,* 17 Cal.3d 129.) The parties must be deemed to have known that passage of a local rent control initiative measure was a possibility as "[o]ne who enters into a contract with a city is chargeable with knowledge of any limitations upon the power which the City is purporting to exercise. [Citations.]" (*Morrison Homes Corp. v. City of Pleasanton, supra,* 58 Cal.App.3d 724, 736.)

The trial court concluded that Measure A "was not the type of amendment either party contemplated in Section 14" and section 14 "must bow to the specific prohibitions stated in the purpose of the agreement." The court further opined that the "common sense interpretation of Section 14 is that the agreement will be subject to any changes in law *beyond control* of the [contracting] parties." (PSD ¶ 11, p. 10, emphasis added.)

Passage of the initiative *was* beyond the control of the City Council. As earlier noted, and as the trial court found, members of that body did not instigate or in any way encourage voter enactment of Measure A. When it

nonetheless passed, the City Council had little choice but to enforce it. (Elec. Code, § 4013.) The Green Book and Measure A could not *both* be enforced. The trial court erred in concluding that the change in the law was not "beyond control" of the City.

The Park Owners contend that section 14 of the Green Book may not be read so as to allow the City to violate its core promise that "so long as Parks are not in breach of this agreement no rent control or rent review ordinance affecting mobile home parks shall be considered or adopted by the City." They argue that section 14 was intended to allow amendment of the Green Book only if a law effecting rent control was passed by the State Legislature or by Congress. They cite testimony of Stanford Green, one of the mobilehome park owners, that his understanding of section 14 was that it was "no more than a technical correction kind of thing, like when Congress passes a law and they [presumably the City Council] go back and do some technical corrections." Green testified he would not have signed the agreement had he believed there was any other basis upon which the City Council could adopt a rent control ordinance abrogating the agreement.

This self-serving testimony does *not* establish that section 14 was intended to cover only amendments implementing a state or federal statute. Section 14 by its own terms supports the construction urged by the City: That the Green Book was subject to modification or abrogation by a change in law promulgated by institutions or persons not bound by its terms – in this case the people of Rohnert Park through the exercise of the initiative power described in the California Constitution.

III.

The City was not estopped from adopting the ordinance implementing Measure A. In *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, the California Supreme Court set forth the requisites for application of the doctrine of equitable estoppel to a public agency. "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*Id.*, at pp. 496-497; *Interstate Marina Development Co. v. County of Los Angeles, supra,* 155 Cal.App.3d 435, 452; *Carty v. City of Ojai* (1978) 77 Cal.App.3d 329, 341.) However, an estoppel will not be applied against the government if to do so would affectively nullify a strong rule of policy, adopted for the benefit of the public. (*City of Long Beach v. Mansell, supra,* at p. 493.)

As a threshhold matter, the Park Owners must demonstrate, among other things, that they were ignorant of the true facts and that they reasonably and detrimentally relied upon a promise by the public agency. (*City of Long Beach v. Mansell, supra,* 3 Cal.3d at p. 489.) Neither of these requisites are met. The Park Owners cannot reasonably claim to have been unaware of the power of the voters to adopt rent control through the initiative process.

" 'It is to be presumed that parties contract in contemplation of the inherent right of the state to exercise unhampered the police power that the sovereign always

reserves to itself for the protection of peace, safety, health and morals. Its effect cannot be nullified in advance by making contracts inconsistent with its enforcement. [Citations.]' *Mott v. Cline* (1927) 200 Cal. 434, 446. . . .)" (*Carty v. City of Ojai, supra,* at p. 342.) In this instance the Green Book itself refers to possible subsequent changes by supervening law in section 14.

Nor is estoppel essential to prevent a grave injustice. First of all, the Park Owners were already subject to some rent regulation under the Green Book. Moreover, it cannot be thought unjust to subject the Park Owners to the risk of a voter initiative they ought to have anticipated, a risk to which all owners of rental property in California are exposed.

Monterey Sand Co., Inc., v. California Coastal Commission (1987) 191 Cal.App.3d 169, relied upon by the Park Owners, is inapposite. There, in settlement of a dispute between Monterey Sand and the state over title to coastal property, Monterey Sand had agreed in 1968 to deed ownership of the property to the state in exchange for the right to continue mining operations in the specified offshore area for 40 years. The 1972 Coastal Zone Conservation Act and 1976 California Coastal Act provided that a person who had acquired vested rights to undertake development within a permit area was exempted from the need to obtain a coastal development permit. (*Id.*, at p. 176.) In 1977, the Central Coast Regional Commission sought Monterey Sand's compliance with development permit requirements of the 1976 Coastal Act, arguing that failure to comply with federal permit requirements prevented Monterey Sand from acquiring a vested right and

subjected Monterey Sand to Coastal Act permit jurisdiction. (*Id.*, at pp. 172-175.) Emphasizing that the grant of the lease was the result of a settlement of litigation over ownership of the property, the court of appeal held that the state had entered the lease and acquiesced in the extraction activities with knowledge that a federal permit might be required and was estopped from later relying upon the failure to obtain the additional federal permit as a basis for denying Monterey Sand's vested rights claim.

The reasons for applying estoppel in *Monterey Sand* are not found here. There the state knew federal permits might be required, but failed to include any reference to the requirement in the settlement agreement or the lease, acquiesced for years in Monterey Sand's activities, then later sought to rely upon the failure to obtain federal permits to deny the company the exemption allowed by the statute. Here, as discussed above, the Park Owners must be deemed to have known that rent control could be imposed by the initiative process described in the state Constitution, and section 14 does not exclude and must be read to contemplate subsequent changes in the law accomplished in this way.

Moreover, *Monterey Sand* turned on the issue of vested rights. The appellate court did not assess damages against the state, rather it found Monterey Sand had a vested right to continue extraction activities free from the permit requirement. The Park Owners, who possess no right to be free of rent control, did not in this case advance any analogous argument.

Conclusion

We conclude that the trial court erred in finding that the City breached the Green Book agreement by adopting and implementing Ordinance 494 following passage of Measure A.

The judgment is reversed. The parties shall bear their own costs on appeal.

Kline, P. J.

WE CONCUR:

Smith, J.

Phelan J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

IONE SIME, et al., Plaintiffs,	)	Case No. 166309
vs.	)	PARTIAL STATEMENT OF DECISION
CITY OF ROHNERT PARK, Defendant.	)	

Phase one of the bifurcated matter was heard before me by stipulation of the parties pursuant to CCP Section 638. Oral argument was heard on December 12 to December 13, and opening and closing briefs have been filed. In addition to the oral and documentary evidence received, the Court has conducted extensive research into the numerous legal authorities cited by the parties.

The preliminary ruling below will be in summary form in an effort to get a speedy decision to the parties. After the completion of the damage phase of the trial the Court upon request of either side will prepare a more extensive and final treatment of the complicated issues surrounding this controversy.

Trial Issues

By virtue of the orders of Bifurcation in this proceeding and stipulation of the parties, the Court's review and the trial were limited to three issues.

A. Whether the 1985 Green Book Agreement (Agreement Re Mobile Home Parks Trial Ex. 5) was a valid and binding agreement

between its signatories: the City of Rohnert Park and the five plaintiff mobile home park owners?

B. If the Green Book was a valid and binding agreement did the enactment of the 1988 Measure A (Trial Ex. 13) or its implementation by the City Council through Ordinance 494 (Trial Ex. 16) substantially breach the Green Book Agreement?

C. If there was a substantial breach of the Green Book Agreement, was that breach excused by a valid exercise of the City's police powers?

Ruling

The City has breached the Green Book Agreement through implementation of Ordinance 494. The City's breach is not excused by the exercise of its police powers. Park owners are entitled to damages caused by the breach.

Findings and Conclusions

1. The Green Book Agreement is a valid and binding contract[1] between the City and the mobile home park owners with the tenants

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[1] The Green Book complies with all the essential elements of contract law. It displays all the formalities of a binding exchange of commitments including consideration. It repeatedly refers to itself as an "agreement" a routinely used equivalent to the word "contract". It is signed by authorized agents of the City.

as third party beneficiaries. It constitutes an innovative contractual rent control system consistent with State and City mandates for affordable housing programs. (See Government Code Section 65583 and Rohnert Park General Plan).

The Terms of the Green Book were drafted with full participation of the City, tenant group representatives, and mobile home park owners. It was adopted unanimously by the City Council and signed by the Mayor. (Trial Exhibit 3)

2. The essential terms of the Green Book Agreement provided the tenants with limitation on rental increases, limits on vacant lots, some modest guarantees of capital improvements, and a method of resolving disputes through arbitration and mediation. In return for giving up free market rents for ten years the Park owners received the guarantee of stable rental income and a fair return on investment for the same period. The City (which should be commended for its innovative and conciliatory role in creating the Green Book) secured a component of affordable housing in keeping with its General Plan.

3. The Park owners established at trial that they reasonably relied on the Green Book in making significant investment decisions. The City is estopped therefore absent an emergency from changing horses in midstream and substituting a new legislative rent control scheme under the Ordinance for the prior contractual one embodied in the Green Book.

4. In the Purpose Section 1 of the Green Book the City agreed to suspend the consideration of a legislative rent review ordinance as long as the Park owners fulfilled their obligations under the Green Book. The City specifically promised that "so long as Parks are not in breach of this agreement no rent control or rent review ordinance affecting mobile home parks shall be considered or adopted by the City." This language was ratified by the City officials.

5. The Park owners did not breach the Green Book Agreement. To the contrary they abided by its terms and submitted contested issues to its mediation provisions. None of the evidence produced at trial established a substantial breach on the part of the Park owners and significantly none was asserted by the City during the year of administrative proceedings prior to trial.

6. The promise in (4) above not to adopt a rent review ordinance during the term of the Green Book did not constitute an illegal divestment of the City's police powers[2] in violation of the principles set forth in *U.S. Trust Co. v. New Jersey* 431 U.S. 1 at p. 203. The City was not refusing to ever impose rent control. Rather the City was trading an uncertain future rent control ordinance for the certainty of a 10 year contractual rent control scheme. The Green Book in effect

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[2] In oral argument the City Attorney (while arguing that the City could replace the Green Book Agreement in 1988 candidly admitted that the City had the right and the power to enter in the Green Book Agreement in 1985).

simply guarantees that during the 10 year contractual period the City would not impose a different rent control scheme than is contained in the Green Book.

7. The passage of Measure A was accomplished according to the lawful initiative process. Although it was passed at a special election by a vote of 1,781 voters reflecting 9% of the eligible electorate, (Exhibit 24) its passage and adoption must be given great respect by the Court which is cognizant of the special consideration given by our legislature to fixed income senior citizens. Additionally the Court is mandated to give deference to the initiative's preamble and purposes. Nevertheless, like any legislation, the provisions of the initiative and Ordinance 484 implementing it are not immune from constitutional and legal scrutiny to determine if it impairs the traditional right of contract.

8. The implementation of Ordinance 484 and its application to the five Park owners clearly constituted a breach of the Green Book Agreement. Evidence produced at trial established major differences between the Ordinance and the Green Book including the rent rollback. The breach caused a substantial impairment and significant financial losses to the Park owners.

9. Despite the seemingly absolute language of the state and federal contract clauses, those constitutional provisions have been interpreted to foreclose only some legislative measures that "impair" the obligation of contract.

> Modern learning is that the standard to be applied to legislation under the contract clause depends on whether the contract that is affected by the legislation is one to which the legislating body itself is a party, on the one hand, or one between parties that are strnagers [sic] to the legislation on the other. The stricter standard is applicable when the legislating body seeks to affect its own contractual commitment, on ground that "self-interest" is then at work.[3]
>
> The contract clause tests are variously stated, but the formulation in *Interstate Marina Development Co. v. County of Los Angeles*, 155 Cal.App.3d 435 (1984) is both representative and authoritative. Only "substantial" modifications of contracts are actionable. When that requirement is satisfied, "laws altering the rights and obligations of contracting parties must be reasonable and necessary for the public purpose for which they were enacted." And the more substantial the impairment,

---

[3] The Green Book is an agreement to which the city is a party, but it might be argued that the reason for the more stringent review is not applicable in this instance, because the City was merely acting as a broker in an accommodation between constituent groups. While there is some force to this point, it does not seem ultimately persuasive. The park owners always had the option of contracting with their tenants, but their agreement in the Green Book is with the City. The reason is not hard to fathom. The park owners relinquish their right to extract a market rent, and the major thing they receive in return, is stable rents and the promise not to consider or adopt a rent control ordinance for the period of the agreement. The commitment could be made meaningful only when given by the City.

the more stringent the review. *Interstate Marina* also quotes the tests of *Home Building & Loan Assoc. v. Blaisdell,* 290 U.S. 398 (1934) with continued approval. As possibly relevant here, *Blaisdell* requires something akin to an emergency before legislation impairing contractual obligations will be justified. And *Blaisdell* requires that the legislation be temporary, so that the impairment will not outlast the emergency that called it forth.

The City has failed to establish that its breach of the Green Book agreement was excused by an emergency exercise of its police power. See *Birkenfeld v. City of Berkeley* (1976) 17C 3d 129.(5) Under the higher scrutiny test set forth in *Interstate Marina Development v. Los Angeles* (1984) 155 Ca 3d 435, 446 the City had the burden to establish an emergency in 1988 which would justify the impairment of the very deal they entered into just three years earlier. Giving full consideration to Resolution 88-27 (Ex.18) the evidence produced did not demonstrate that the rental shortage in 1988 was any more severe than the shortage that existed in 1985 or 1983 when the Memorandum of Understanding was concluded.

10. Accordingly under the circumstances of this case the constitutional and common law principles underlying stability of contracts in our society override the power of the electorate and the City to substitute in midstream one rent control scheme for

another. Article I Section 10 of U.S. Constitution. Article 1 Section 9 California Constitution. Even if the higher scrutiny test of *Interstate Marina* supra did not apply in light of the City's specific promise not to pass a rent control ordinance during the ten years of the Green Book agreement it was unreasonable for them to apply the Ordinance rollback provisions to the five Park owners who were signatories to the original agreement. Compare *Interstate Marina* supra p. 389 where the Court found the County of Los Angeles "never mislead lessees to believe that their rents would not be controlled." See also *Sonoma County Employees v. Sonoma County* (1979) 23 Cal 3d 296.

---

(5) *Birkenfeld* supra established without doubt a municipality's power to limit or control rents. Nothing in this decision should be interpreted as being contrary to the *Birkenfeld* holding. The issue before this court is not the constitutionality of a rent control ordinance. Rather it is the legality of substituting on [sic] rent scheme for another. See also *Carson v. Mobile Home Park Assn.* (1985) 35 C 3d 184.

11. The City may not be excused from its breach by the provision of Section 14 of the Green Book which "automatically amended to include any change in law affecting its provision or rent controls." Measure A which vitiates the Green Book is not the type of amendment either party contemplated in Section 14 which must bow to the specific prohibitions stated in the purpose of the agreement. (See paragraph 4 above)

The common sense interpretation of Section 14 is that the agreement will be subject to any changes in law beyond control of the constructing parties.

12. The Court is mindful of some of the history which underlies this dispute. The City acted as a peacemaker in 1985 when it helped broker the Green Book in an effort to bring stability to the tenant-owner factions in the five mobile park homes. City officials did not solicit or initiate Measure A. Additionally, the City did not stand to gain any financial reward from the implementation of Ordinance 484 (as was the case for Los Angeles in *Interstate Marina*). However, once it was passed the Initiative placed the City Council between the mythological Scylla and Charibdes. It is not necessary for the court to rule on or evaluate what alternatives might have been available to the City when faced with the dilemma of whether to honor the Initiative or the Green Book Agreement.

13. Having found that the City breached the Green Book Agreement and that the breach is not excused the Court will proceed to the damage phase of this matter. The parties are ordered to set a status conference within 30 days.

/s/ Daniel H. Weinstein
Daniel H. Weinstein
Judge protem

First Appellate District, Division Two, No. A057779
S044272

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

(Filed Feb. 16, 1995)

IONA SIME Et Al., Respondents

v.

CITY OF ROHNERT PARK, Appellant

Appellant's petition for review DENIED.

LUCAS
Chief Justice

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(2)

No. 94-1888

Supreme Court, U.S.
FILED
JUN 19 1995
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

IONA SIME, et al.,

Petitioners,

v.

CITY OF ROHNERT PARK,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRITT OF CERTIORARI

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QUESTIONS PRESENTED

Does an unreported Decision of the California Court of Appeal meet any of the criteria of this Court's Rule 10, or any other criteria justifying affirmative certiorari discretion where:

1. The case is a breach of contract claim and decides, without implicating any Federal question, that no breach of contract occurred?

2. The alleged Federal question presented by the Petiiton for Certiorari was neither pleaded in the trial court, nor reached by the California Court of Appeal?

3. The alleged Constitutional violation, the impairment of Petitioners' contract by the passage of an initiative measure, was specifically contemplated by the parties and included as a condition subsequent term of the contract?

4. The question presented is a unique local situation not likely to be repeated, and was decided in a way which conflicts with no applicable decision of this Court?

5. There was no alleged "impairment of contract" because a valid state law allows a contractual change when it occurrs by "the operation of law. . . . "?

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I.

INTRODUCTION

In attempting to persuade this Court to review the unpublished decision of an intermediate California Appellate Court which never reached or decided a Federal question but decided the case on the basis of the interpretation of the contractual language, as well as, alternatively, the application of an unchallenged California Law, Petitioners have badly distorted the holding of the California Court and have ignored this Court's Rule 10, which requires "special and important reasons" for

the exercise of certiorari jurisdiction. It is not enough for certiorari consideration that the matter is important to the Petitioners. There must be a departure from Constitutional Standards. There was none here because the California court reached no Federal question but decided the case on adequate state grounds. Nor is there a conflict between the ruling of the court below and any other reported state or federal case. Further review of this case would be of significance to the parties, but would be utterly without precedental value in deciding other controversies, whether existing or potential.

II.

STATEMENT OF THE CASE

An initiative ordinance, the validity of which is not disputed by Petitioners, superseded an existing contract ("The Green Book") on the subject of control of rents charged by the owners of mobilehome parks in the City of Rohnert Park. The initiative rent control measure was less favorable to the economic interests of the owners of the mobilehome parks than was the existing Green Book contract. The park owners sued for their lost profits when the initiative was substituted for The Green Book. The denial of these profits is the alleged impairment of contract creating the Federal question for certiorari jurisdiction. In fact, both the contract itself (in its §14, quoted at Appendix 3) and California Civil Code §1511(1) (Appendix 10) in effect at the time the contract was entered into by the parties, allowed for the abrogation of The Green Book contact under certain circumstances. The holding of the California Court of Appeal is that these circumstances

were met in both respects and, therefore, there was no breach of contract. Petitioners' disagreement with the Court of Appeal and their cry for their lost profits does not make a Federal question. There is no possible impairment of contract when the parties agree that the contract may be changed under certain circumstances and those circumstances have occurred. The California Court of Appeal did not need to pass on any Federal question because the state law rulings were each independently decisive. Review has been denied by the California Supreme Court (Appendix 30) and these state law decisions are final.

A number of misstatements of fact and law are set forth in the Petition which Respondent feels must be corrected at this point. First, The Green Book Contract was between the owners of all of the City's mobilehome parks and the City itself, but was not signed by any tenants in the mobile home parks or by any group purporting to bind the citizens of the City of Rohnert Park. Second, the City did not void The Green Book contract but merely obeyed the requirements of California Elections Code Section 4013 (Appendix page 9), which makes an initiative measure voted in by a majority of the voters a valid and binding ordinance of the City. Third, the Petitioners have invoked Section 3-G of the initiative by quoting a part of it "entirely out of context" as stated by the Court below (Appendix page 13) in rejecting Petitioners' same argument. Petitioners' interpretation of that clause would require the City to nullify an initiative ordinance, a power which the Court below correctly held the City did not have under California Law. This is

clearly a matter of state law only. In California, an initiative measure prevails over a conflicting local enactment. *C-Y Development Corp. v. City of Redlands*, 137 Cal.App.3d 926, 932 (1982).

Fourth, it is not correct that the mobilehome park owners challenged the initiative ordinance as an impairment of contractual rights in violation of the United States Constitution in their lawsuit. In fact, their First Amended Complaint (the final pleading in the action) only alleges an impairment of their contractual rights under the State Constitution (First Amended Complaint, page 9). Next, it is not correct that the California Court of Appeal "excused the City's breach of contract under the doctrine of impossibility. . . . " by side stepping the impairment of contract argument (Petition, page 8). The Court of Appeal held that the Petitioners had specifically agreed to be bound by a subsequent change in the law in Section 14 of The Green Book contract and that, in any event, California Civil Code Section 1511, subdivision 1 (quoted Appendix page 10), excuses the performance of a contractual obligation when it is prevented by the operation of law, and that the parties to The Green Book contract were bound by this provision of law in making their contract.[1] Lastly, it is absurd and manifestly incorrect for Petitioners to claim that the California Court of Appeal ruled that the initiative power of the electorate of a California city must be upheld even if its exercise

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[1] Respondent City, as is undisputed, took no part in the passage of the initiative measure and thus no question of estoppel or bad faith because of The Green Book's abrogation is presented. Appendix pages 15-16.

breaches rights protected by the United States Constitution (Petition, page 8). The California Court of Appeal made it crystal clear that no such claim was made:

> "We do not reach the issue of impairment and so need not address the impairment cases relied upon by the park owners, e.g., *U.S. Trust v. New Jersey*, 431 U.S. 1 (1977), *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1977), and *Interstate Marina Development Company v. County of Los Angeles*, 155 Cal.App.3d 435 (1994)." (Appendix page 9.)

III.

ARGUMENT

The California Court of Appeal reached no Federal question; it simply decided that the parties to The Green Book anticipated in the agreement that a change in the governing law, including a change by the initiative process, would change their contractual obligations and, alternatively, that regardless of the terms of the contract itself, an unchallenged California Law excused the performance of a contractual obligation changed by operation of law (California Civil Code Section 1511(1), quoted Appendix 10). It is not unconstitutional for California law to provide, at least as to contracts made after the date of such a law, that a party cannot be required to violate a law to avoid liability for a breach of contract. See *Bright v. Bechtel*, 780 F.2d 766, 772 (9th Circuit 1986). Thus, it is entirely inaccurate for Petitioners to charge that the California Court of Appeal "ignored the Federal Constitutional limitations on initiative legislation." (Petition, page 13.) It is also clear that not a single criteria provided for

in this Court's Rule 10 is even arguably presented by this case.

This case turns upon the unique contractual language of The Green Book contract and its interpretation would have absolutely no bearing on any significant Federal question or, indeed, any other issue which might be litigated besides the one of whether Petitioners should be able to collect damages for breach of contract.[2]

Similarly, Petitioners dispute the conclusion of the California Court of Appeal that the initiative measure was a change of law beyond the control of the parties by claiming that Section 3-G of the initiative measure allowed the Respondent to abrogate the initiative measure to protect the contractual rights of the Petitioners under The Green Book contract. However, and once again, this is purely a question of State law interpretation of contract. The California Court of Appeal rejected Petitioner's interpretation of Section 3-G as an unreasonable reading of the ordinance. Such an interpretation does not present a Federal question. The ordinance challenged by the Petitioners simply does not impair the obligation of their contract because they knew that their contractual rights were subject to change in accordance with existing California Law. The interpretation of California Law is

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[2] "This court has consistently affirmed that states have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Loretto v. Teleprompter Manhattan Corp.*, 458 U.S. 419, 440 (1982); quoted with approval, *Yee v. City of Escondito*, 503 U.S. ___, 118 L.Ed.2d 153 (1992).

exclusively within the determination of the California Courts. *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945); *Grayson v. Harris*, 267 U.S. 352, 358 (1925).

IV.

CONCLUSION

There is no Federal question for this Court to review and, if there were, it would be of such narrow interest as to clearly lack the importance and significance of cases to be adjudicated in The Supreme Court of the United States.

Dated: June 15, 1995

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 12 1995
OFFICE OF THE CLERK

(3)

No. 94-1888

In The

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IONA SIME, *et al.*,

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CITY OF ROHNERT PARK,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

BRIEF IN REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

This case presents a simple question of the precedence of federal law over that of a state. That is, should the "intent" of a local ordinance, enacted under the initiative process authorized and protected by the California Constitution, take precedence over the "intent" of a valid but conflicting contract when the federal constitutional standard permitting government impairment of contract has not been met?

Upon the electorate's approval of initiative Ordinance 494, the City adopted the Ordinance and implemented it to Park Owners. The City thus voided, or replaced,[1] the rent control program which it had agreed to in signing the Green Book contract, and breached its promise, set forth in the Purpose of the Green Book, that "so long as Parks are not in breach of this agreement no rent control or rent review ordinance affecting mobile home parks shall be considered or adopted by the City."

Section 14 of the Green Book set forth an escape clause, providing in relevant part: "This Agreement shall be automatically amended to include any change in law affecting its provisions or rent controls." So as not to make a nullity of the Purpose statement, both the trial

---

[1] The City insists it did not "void" the Green Book. If it did not, a technically more correct statement might be "abrogate", or "breach" or "substantially impair." It is certain that in adopting and implementing Ordinance 494, the City did not fulfill its promise not to adopt a rent control initiative and replaced the Green Book's rent control program with that of Ordinance 494.

court and the Court of Appeal determined that Section 14 only applied to changes of law "beyond the control of the parties." (Appendix 15 and 28-29)

While Ordinance 494 was enacted by the electorate, it was to be adopted, implemented and applied by the City. Section 3-G of Ordinance 494 allows the City to decontrol "any category or classification of units." The Ordinance's terms thus saved it from violating the Contract Clause on its face. However, the City, in exercising its police power to implement the will of the electorate, failed to apply Ordinance Section 3-G to decontrol the Parks during the life of the Green Book.

The trial court thus determined the City's implementation of Ordinance 494 to the Park Owners constituted an unexcused impairment of contract in violation of Article I Section 10 of the U.S. Constitution and Article 1 Section 9 of the California Constitution.[2] (Appendix 22,

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[2] The City asserts there is no federal Contract Clause question because Park Owners' complaint alleges a violation of the obligation of contracts under the California Constitution. The Contract Clauses of federal and California Constitutions are equivalent and interpreted under the same standard. *Sonoma County Employees v. Sonoma County*, 23 Cal.3d 296, 307 (1979); *Thorning v. Hollister Sch. Dist.*, 11 Cal.App.4th 1598, 1610 (1992); also Appendix 26. Moreover, the trial court considered both state and federal case law interpreting the Contract Clause and found violation of both Article I, Section 10 of the U.S. Constitution and Article 1 Section 9 of the California Constitution. (Appendix 25-28) Even where an issue has not been pressed, if it has been passed upon below, review on certiorari is permissible. *Lebron v. National R. Passenger Corp.*, ___ U.S. ___, 115 S.Ct. 961, 130 L.Ed.2d 902, 1995 US Lexis 909, 910 (1995); citing *United States v. William*, 504 U.S. ___ (1992) (Slip op., at 4); *Virginia*

27-28) The trial court found no evidence "justify[ing] the impairment of the very deal [Rohnert Park had] entered into just three years earlier." (Appendix 27) Compare standard set forth in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 198 S.Ct. 2716, 57 L.Ed.2d 727 (1978). The Court of Appeal ignored but did not reverse this finding.

The Court of Appeal did, however, "reject[] Park Owners'[and the trial court's] interpretation of [Section 3-G] of the Ordinance as unreasonable because it would have the effect of undermining the voter initiative." (Appendix 13) Finding the Park Owners' interpretation of Section 3-G "entirely out of context," the Court of Appeal elevated the initiative's intent and purpose to control mobile home space rents within the City over the equivalent intent and purpose of the Green Book contract. (Compare Section 3-G of Ordinance 494 with Green Book § 1, Purpose, quoted at pp.17-18 of Petition.) It did so in spite of the trial court's finding that implementation of Ordinance #494 *to Park Owners* did not meet the standard required by the Contract Clause for a lawful impairment of contract, and in contravention of the federal maxim that "as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plan duty is to adopt that which will save the act." *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30, 81 L.Ed. 893 (1937); quoted in *Robertson v. Seattle Audobon Soc.*, 503 U.S. 429, 441, 112 S.Ct. 1407, 118

Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1099, n.8, 111 S.Ct. 2749, 115 L.Ed.2d 929 (1991); *Stevens v. Department of Treasury*, 500 U.S. 1, 8, 111 S.Ct. 1562, 114 L.Ed.2d 1 (1991).

L.Ed.2d 73 (1992); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Build & Const. Trades Council*, 485 U.S. 568, 575, 108 S.Ct. 1392, 1397, 99 L.Ed.2d 645 (1988) [When an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems]; *Communications Workers of Am. v. Beck*, 487 U.S. 735, 762, 108 S.Ct. 2641, 2657, 101 L.Ed.2d 634 (1988) [same]. In short, the Court of Appeal determined that the will of the electorate as expressed in initiative legislation must necessarily be preserved over the intent of a conflicting contract.

An ordinance, whether enacted by the local legislature or by the electorate under the power of the initiative, must conform to federal constitutional limitations and safeguards. *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-37, 845 S.Ct. 1459, 12 L.Ed.2d 632 (1964). Moreover, a local government, like a State judiciary, has a duty to uphold the protections afforded individuals under the U.S. Constitution. *Preferred Communications, Inc. v. City of Los Angeles*, 13 F.2d 1327, 1333 (9th Cir. 1994) ["All government officials have a duty to uphold the United States Constitution . . . "] Thus the mere fact that initiative Ordinance 494 was enacted by the electorate, did not relieve the City of its obligation to implement it in a constitutional manner. Section 3-G, under standard rules regarding the constitutional interpretation of legislation, empowered the City to do so. The Court of Appeal's determination that Section 14 applied to relieve the City of its contractual obligation, consequently, is not an *independent* or *adequate* state ground upon which to deny petitioners a writ of certiorari. Rather, the Court of Appeal's conclusion is entangled in

its decision to elevate the intent and purpose of the initiative over that of the conflicting contract, in spite of the constitutional standard for lawful impairment of contract. See *Straub v. City of Baxley*, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958) [granting certiorari review of Florida Court of Appeal decision, where Florida Supreme Court denied review, and where court of appeal's decision based on state law elevated local ordinance over federal constitutional protections for speech and assembly; see also *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 167; *State Tax Comm'n v. Van Cott*, 306 U.S. 511, 514, and *Perkins v. Benquet Mining Co.*, 342 U.S. 437, 448 [indicating that certiorari is permissible where the state basis of decision is so interwoven with the federal question as not to be an independent matter.]

This case raises important concerns regarding the implementation of initiatives in the face of constitutional limitations. This court should issue a writ of certiorari to ensure the supremacy of federal constitutional protections over a government's overzealous exercise of police powers to implement the will of its electorate.

Dated: July 11, 1995

Respectfully submitted,

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